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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/510,509	10/07/2004	Barry Hague	C7664 US	8895
7590	11/08/2006		EXAMINER	
JohnsonDiversey Inc Patent Section-M S 509 8310 16th Street P O Box 902 Sturtevant, WI 53177-0902			PRICE, CRAIG JAMES	
			ART UNIT	PAPER NUMBER
			3753	
DATE MAILED: 11/08/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/510,509	HAGUE ET AL.	
	Examiner	Art Unit	
	Craig Price	3753	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 29 August 2006.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-4 and 11-13 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-4 and 11-13 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 07 October 2004 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) Notice of Informal Patent Application
- 6) Other: _____

DETAILED ACTION

Oath/Declaration

1. Applicant's amendment has corrected the defective oath.

Claim Rejections - 35 USC § 112

2. Applicant's amendment has overcome the objection to the 35 USC 112 second paragraph rejection.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-4, and 11-13 are rejected under 35 U.S.C. 102(e) as being unpatentable by Smeller et al. (6,363,977).

Smeller et al. disclose an eductor comprising a body having an inlet portion (the female threaded portion above 52a) and a venturi structure (54) spaced therefrom, an

air gap across which in air gap operational mode a liquid jet is passed to the venturi structure (54) and a removable non-return valve (52a) located in the air gap between the inlet portion and the venturi structure, whereby the eductor is convertible between the air gap operational mode and non-return valve operational mode without removal of the air gap (the air gap is not removed), as seen in Figures 17 and 18 (Col. 6, Lns. 32 – Col. 7, Lns. 2).

Regarding claim 2, Smeller et al. disclose an eductor, wherein in air gap operational mode the eductor has a nozzle to provide the liquid jet, the nozzle being removable and replaced by the non-return valve (52a shown in Figure 17) on conversion as shown in Figure 18.

Regarding claim 3, Smeller et al. disclose an eductor, wherein the non-return valve has an outlet providing in use a fluid jet directed into the venturi structure, as shown in Figure 17 (and Col. 2, Lns. 35-36 in US 6,240,983, incorporated by reference into '977, which describes the operation of the valve contained in Smeller et al.).

Regarding claim 4, Smeller et al. disclose an eductor, wherein the non-return valve provides a sealed first flow path across the air gap when open for liquid flow to the venturi structure (disclosed in US 6,240,983, Col. 2, Lns. 26-33) and provides a second flow path for back flow from the venturi structure into the air gap out of the non-return valve when the first flow path is closed (disclosed in US 6,240,983 and Col. 2, Lns. 36-41 and the second path is shown in figure 3b).

Regarding claim 11, Smeller et al. disclose an eductor, wherein the non-return

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valve has an outlet providing in use a fluid jet directed into the venturi structure, as shown in Figure 17 (and Col. 2, Lns. 35-36 in US 6,240,983, incorporated by reference into '977, which describes the operation of the valve contained in Smeller et al.).

Regarding claim 12, Smeller et al. disclose an eductor, wherein the non-return valve provides a sealed first flow path across the air gap when open for liquid flow to the venturi structure (disclosed in US 6,240,983, Col. 2, Lns. 26-33) and provides a second flow path for back flow from the venturi structure into the air gap out of the non-return valve when the first flow path is closed (disclosed in US 6,240,983 and Col. 2, Lns. 36-41 and the second path is shown in figure 3b).

Regarding claim 13, Smeller et al. disclose an eductor, wherein the non-return valve provides a sealed first flow path across the air gap when open for liquid flow to the venturi structure (disclosed in US 6,240,983, Col. 2, Lns. 26-33) and provides a second flow path for back flow from the venturi structure into the air gap out of the non-return valve when the first flow path is closed (disclosed in US 6,240,983 and Col. 2, Lns. 36-41 and the second path is shown in figure 3b).

Response to Arguments

4. Applicant's arguments filed 8/29/2006 have been fully considered but they are not persuasive.

In regards to your argument concerning that Smeller et al. does not provide a removable non-return valve that is located in an air gap between the inlet portion and the venture structure without removal of the air gap, the Smeller et al. reference In

column 6, line 32-39 "In Fig. 17, the backflow preventer 52a...in the above-mentioned copending application Ser. No. 09/538,324...", which is now patent 6,240,983 (Beldham et al.), which describes the non-return valve used in the Smeller et al. reference (Beldham et al. US 6,240,983; Col. 2, Lns. 26-41). The non-return valve of Smeller et al. is convertible between the air gap operational mode and non-return valve operational mode without removal of the air gap in that the air gap is not removed from the eductor and performs both functions of the air gap operational mode and non-return valve operational mode.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Craig Price whose telephone number is (571) 272-2712.

The examiner can normally be reached on 7AM - 5:30PM M-R.

7. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Keasel can be reached on (571) 272-4929. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CP



6 November 2006



ERIC KEASEL
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700